FH

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

MPA/147317

PRELIMINARY RECITALS

Pursuant to a petition filed February 11, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability (DHCAA), now known as the Office of Inspector General (OIG) in regard to Medical Assistance (MA), a telephonic hearing was held on April 09, 2013, at Kenosha, Wisconsin. The record was held open to allow the petitioner's provider the opportunity to submit a response to the denial, which occurred. The information was the sent back to the OIG for a review and it issued a summary of that review in a letter dated April 17, 2013, which again affirmed its original denial. On April 23, 2013 petitioner's mother contacted this ALJ to indicate no further response would be made from herself or the provider.

The issue for determination is whether the OIG correctly denied petitioner's prior authorization (PA) request because it did not support the medical necessity for the requested occupational therapy (OT) services.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:
Petitioner:

[redacted]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By written submittal of Mary Chucka, OTR
Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:
Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Kenosha County. He is 10 years old and certified as eligible for MA.
2. Petitioner is diagnosed with autistic disorder, lack of coordination, generalized weakness, bipolar, Asperger's and Pervasive Developmental Disorder (PDD).
3. On December 31, 2012 the petitioner's private OT submitted a PA request to the OIG. The request was made for 2 weekly sessions of OT for 12 weeks beginning in December 2012.
4. On January 29, 2013 the OIG issued a notice to petitioner denying the PA request because it concluded that the OT regimen requested was not sufficiently documented to be medically necessary under Wisconsin's MA rules.

DISCUSSION

OT is covered by MA under Wis. Adm. Code, §DHS 107.17. Generally OT is covered without need for prior authorization for 35 treatment days, per spell of illness. Wis. Adm. Code, §DHS 107.17(2)(b). After that, prior authorization for additional treatment is necessary. If prior authorization is requested, it is the provider's responsibility to justify the need for the service. Wis. Adm. Code, §DHS 107.02(3)(d)6. If the person receives therapy in school or from another private therapist, there must be documentation of why the additional therapy is needed and coordination between the therapists. Prior Authorization Guidelines Manual, p. 112.001.02, nos. 2 and 3.

In reviewing a PA request the OIG must consider the general PA criteria found at §DHS 107.02(3) and the definition of "medical necessity" found at §DHS 101.03(96m). Section DHS 101.03(96m) defines medical necessity in the following relevant provisions:

> "Medically necessary" means a medical assistance service under ch. DHS 107 that is:
>
> (a) Required to prevent, identify or treat a recipient's illness, injury, or disability; and
>
> (b) Meets the following standards:
>
> 1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
> 2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider and the setting in which the service is provided;
> 3. Is appropriate with regard to generally accepted standards of medical practice;
> 4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
> 5. Is of proven medical value or usefulness and, consistent with s. DHS 107.035, is not experimental in nature;
> 6. Is not duplicative with respect to other services being provided to the recipient;
> 7. Is not solely for the convenience of the recipient, the recipient's family or a provider;
> 8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
> 9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Wis. Adm. Code §DHS 101.03(96m).

The OIG argues that the information submitted by the provider did not show why the requested OT is required to prevent, identify or treat a recipient's illness, injury, or disability. The OIG denied the request primarily because the evaluation did not show the medical need for the services. More specifically, the agency was asking for more information on the "problem areas" that the provider was treating. The PA lists his treatment diagnoses as lack of coordination and muscle weakness. It lists the problems to be treated as decreased strength, decreased upper extremity and bilateral coordination, delayed social function, delayed problem solving and coping skills, and decreased processing skills. The problem is that the evaluation and the provider's plans of care do not show any objective clinical measurement of those impairments so that any changes could be identified, measured, or even compared to show improvement as a result of the OT provided. His limitations were measured in terms of a comparison to a peer group average, but he is also stated to be independent with all self-care skills even though he may not always be willing to participate or follow through. There were also obvious distinctions between this evaluation and a previous evaluation from a different provider showing different limitations.

There is no doubt that petitioner has sensory issues and behavioral issues, which appear to be heightened when he cannot do things such as manipulate his snaps. It was stated at hearing that he has difficulty with some snaps (e.g., on pants) which has caused him to wet himself at school. It was also stated that he does not do a very good job of brushing teeth, opening apple sauce containers, gets frustrated with handwriting, lacks coordination for running, and does not use silverware when eating. However, I must agree that the correlation between the deficits he has, as informally measured and described anecdotally, and the plan of care does not show how his functional skills will be enhanced. The medical necessity for these OT services is not shown. This is why a baseline quantitative assessment is performed and subsequent assessments on the same or similar basis are necessary to demonstrate "progress". This also would serve to show how this OT provider is benefitting petitioner, when he receives other services from other providers that could be duplicating services or at least working on the same goals, such as the behavior therapist or the sensory strategies used at school. It would also show petitioner could maintain the benefit of the OT outside of the clinical setting. Without clinical information to identify petitioner's gains or losses, the PA request for OT is not supported.

Finally, petitioner's mother, who is an excellent advocate for her son, anecdotally described his regression when not in therapy and what his outbursts can involve, including inpatient hospitalizations. However, that still does not provide us with measurable limitations, or explain why school behavior management, other school services, or the pharmacological management he receives would not also be addressing those limitations, which according to the petitioner's doctor, has shown him benefit. This is not to diminish the challenges petitioner and his family face, however, I do not find that the evidence at this time supports the requested services.

Based upon my review of the record in this case, I must agree with the OIG's decision to deny the PA. The basic assertion of the OIG has been the lack of evidence that would justify the *medical* need for OT services in a clinical setting as requested. Therefore, I must conclude the requested OT in this case is not covered by the MA program. I note for petitioner's benefit that this is not a bar to submitting another PA request for OT. The requesting provider will need to provide the basic documentation to support another request, however.

While petitioner may believe this to be unfair, it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on constitutional or equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

CONCLUSIONS OF LAW

The OIG correctly denied petitioner's PA request because it did not support the medical necessity for the requested OT services.

THEREFORE, it is **ORDERED**

The petition for review herein is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400. The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 8th day of May, 2013

_____

\sKelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals

State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

David H. Schwarz
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: http://dha.state.wi.us

The preceding decision was sent to the following parties on May 8, 2013.

Division of Health Care Access And Accountability